Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

REPLY COMMENTS OF RCA—THE COMPETITIVE CARRIERS ASSOCIATION

RCA—The Competitive Carriers Association ("RCA") hereby submits these reply comments in response to Sections XVII.L-R of the *Further Notice of Proposed Rulemaking* and the opening comments in the above-captioned dockets.[1]

RCA has long championed efforts to promote competition in the wireless marketplace. RCA, however, has concerns that without significant Commission involvement in a number of

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[1] *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*CAF Order*" or "*FNPRM*").

areas, competition in the wireless industry will suffer. As a result, RCA has focused on the most important elements of wireless competition: voice and data roaming, spectrum interoperability, nondiscriminatory access to handsets, and competitively neutral universal service funding. But, as the opening comments illustrate, preserving nondiscriminatory access to interconnection and transit services has emerged as another critical component of this procompetitive agenda.

Most significantly, the Commission should ensure that wireless carriers can interconnect and exchange traffic with incumbent local exchange carriers ("ILECs") in Internet Protocol ("IP") format. AT&T and Verizon, alone among industry participants, argue that the Commission loses authority to enforce bedrock interconnection requirements as soon as IP technology is introduced into the network. But their arguments here, just like their opposition to other key aspects of the Commission's procompetitive agenda, fail in light of Congress's establishment of broad, technologically neutral statutory authority to safeguard competition and the public interest.

The opening comments amply demonstrate that when ILECs insist that interconnecting competitive carriers convert traffic to time division multiplexing ("TDM") format before handing it off, they are able to increase their rivals' costs and diminish service quality. But as the *FNPRM* recognizes, the technologically neutral interconnection mandates in Section 251 of the Communications Act of 1934, as amended (the "Act"), apply to IP-to-IP interconnection just as they apply to TDM interconnection. Section 251 expressly requires ILECs to interconnect and exchange traffic in whatever format the interconnecting carrier requests, including in IP, unless such a request would be technically infeasible or economically unreasonable. In light of the many important benefits that will flow from nationwide IP-to-IP interconnection, including increased innovation and competition and a timelier transition to all-IP networks, RCA urges the

Commission to adopt and vigorously enforce rules requiring ILECs to provide IP-based interconnection.

For the same reasons, the Commission should clarify that ILECs' transit services are governed by Section 251(c), and accordingly must be provided at cost-based rates. Just as IP-to-IP interconnection is necessary to promote competition and ubiquitous connectivity, reasonably priced transit services are vital to achieving those objectives. Moreover, the Commission should ensure that ILECs cannot undercut the mandated reductions in terminating access charges by inflating rates for bottleneck services such as transit.

DISCUSSION

I. THE OPENING COMMENTS CONFIRM THAT THE COMMISSION HAS AUTHORITY TO REQUIRE ILECS TO PROVIDE IP-BASED INTERCONNECTION AND EXCHANGE OF TRAFFIC

A diverse group of stakeholders representing a broad cross-section of the industry—including wireless carriers, competitive wireline service providers, and even ILECs—agree that the Commission can and should require ILECs to provide IP-to-IP interconnection.[2] The record

[2] *See, e.g.*, Comments of Leap Wireless International, Inc. and Cricket Communications, Inc., WC Docket No. 10-90 *et al.*, at 12-14 (filed Feb. 24, 2012) ("Leap/Cricket Comments"); Comments of T-Mobile USA, Inc., WC Docket No. 10-90 *et al.*, at 6-7 (filed Feb. 24, 2012) ("T-Mobile Comments"); Comments of MetroPCS Communications, Inc., WC Docket No. 10-90 *et al.*, at 15-19 (filed Feb. 24, 2012) ("MetroPCS Comments"); Comments of Sprint Nextel Corporation, WC Docket No. 10-90 *et al.*, at 1-23 (filed Feb. 24, 2012) ("Sprint Nextel Comments"); Comments of Time Warner Cable Inc., WC Docket No. 10-90 *et al.*, at 6-10 (filed Feb. 24, 2012) ("Time Warner Cable Comments"); Comments of Charter Communications, Inc., WC Docket No. 10-90 *et al.*, at 3-9 (filed Feb. 24, 2012) ("Charter Comments"); Comments of XO Communications, LLC on Sections XVII.L-R of the Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.*, at 8-15 (filed Feb. 24, 2012); Comments of Windstream Communications, Inc. on Sections XVII.L-R, WC Docket No. 10-90 *et al.*, at 14 (filed Feb. 24, 2012); Initial Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the

thus confirms that "the Commission has the statutory authority to regulate IP-to-IP interconnection under multiple provisions [of the Act]."[3] And as Sprint Nextel explains, the Commission need not classify retail VoIP services as telecommunications services or information services to safeguard interconnection rights, because the Commission's authority to require IP interconnection is "unquestionabl[e]" in either case.[4]

RCA agrees with these commenters and therefore urges the Commission to clarify that the interconnection rights established by Section 251 apply fully with respect to traffic exchanged in IP format, and without regard to the statutory classification of IP-based services provided to end users. As a result, Section 251 of the Act requires ILECs to negotiate interconnection agreements for the exchange of IP-based voice traffic whenever and wherever technically feasible and, without a doubt, whenever the ILEC in question already transmits such traffic on its own network.

As noted above, the language of Section 251 is unequivocally technology-neutral. Section 251(a) requires all telecommunications carriers "to interconnect [their networks] directly or indirectly with the facilities and equipment of other carriers," and it makes no reference to any particular type of technology or protocol.[5] Section 251(b)(5) likewise requires local exchange carriers ("LECs") "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[6] Section 251(c)(2)(B) further requires ILECs to interconnect with requesting carriers "at any technically feasible point," again without any

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Western Telecommunications Alliance on Sections XVII.L-R (Intercarrier Compensation Issues), WC Docket No. 10-90 *et al.*, at 37-40 (filed Feb. 24, 2012).

3 MetroPCS Comments at 16.

4 Sprint Nextel Comments at 6-7.

5 47 U.S.C. § 251(a)(1).

6 *Id.* § 251(b)(5).

technology-based limitations.[7] Moreover, the fact that Sections 251(c)(2)(C) and (D) require that interconnection arrangements be "at least equal in quality to that provided by the [LEC] to itself" and also on "nondiscriminatory" terms further confirms the Commission's authority to mandate IP interconnection in cases where ILECs rely on such technology to route their own telecommunications traffic.[8]

Not surprisingly, given their dominant status, AT&T and Verizon insist that IP voice traffic somehow falls outside the scope of Section 251—including by pointing to the unsettled regulatory classification of retail VoIP services.[9] But the Commission established several years ago that IP-based voice traffic is "'*telecommunications*' traffic, regardless of whether interconnected VoIP service were to be classified as a telecommunications service or information service."[10] Moreover, the Commission recently reaffirmed the rights of telecommunications carriers carrying IP-based traffic "to interconnect and exchange traffic with incumbent LECs … including for the specific purpose of providing wholesale services to interconnected VoIP providers."[11] Indeed, "the regulatory classification of the service provided to the ultimate end

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7 *Id.* § 251(c)(2)(B).

8 *Id.* §§ 251(c)(2)(C), (D).

9 *See* Comments of Verizon, WC Docket No. 10-90 *et al.*, at 9-39 (filed Feb. 24, 2012) ("Verizon Comments"); Comments of AT&T, WC Docket No. 10-90 *et al.*, at 9-33 (filed Feb. 24, 2012) ("AT&T Comments").

10 *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 ¶ 615 (2011) (emphasis added) (citing *Universal Service Contribution Methodology* et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 ¶¶ 39-41 (2006)).

11 *Petition of CRC Communications of Maine, Inc.* Declaratory Ruling, 26 FCC Rcd 8259 ¶ 26 (2011).

user *has no bearing*" on wholesale intercarrier rights.[12] This precedent, all of which is grounded in the basic obligations imposed under Section 251, provides the appropriate foundation for the Commission to clarify that Section 251 also includes the right of telecommunications carriers to interconnect and exchange traffic in IP format. In any event, AT&T's and Verizon's claims regarding VoIP service are particularly irrelevant as to wireless carriers, as wireless voice traffic originates and/or terminates in native *CMRS* format, and there is no question that such traffic is telecommunications service traffic.

II. THE COMMISSION SHOULD ENSURE THAT TRANSIT SERVICES ARE AVAILABLE ON NONDISCRIMINATORY TERMS AND AT COST-BASED RATES

Likewise, the Commission also should continue to regulate ILECs' provision of tandem switched transit services. As MetroPCS explains, "[t]he ability of the originating carrier to secure transiting services from connecting carriers is a critical [part of] … interconnection."[13] Transit services provide a vital link between ILECs' tandem switches and the networks of other carriers. Because ILECs built up their networks over decades while they enjoyed legally protected monopolies, they alone have the ubiquitous infrastructure to enable connectivity to all carriers on the PSTN.[14] Forcing CMRS carriers to interconnect directly with all carriers—thus foregoing the use of ILEC transit services—would be economically infeasible and grossly inefficient.

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12 *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 ¶ 15 (WCB 2007) (emphasis added).

13 MetroPCS Comments at 8.

14 *See, e.g.*, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 ¶ 86 (2005).

Accordingly, many commenters have recognized the critical need to confirm that transit services are governed by Section 251(c) and must be provided at cost-based rates.[15] Section 251(c) requires ILECs to interconnect "for the transmission and routing of telephone exchange service and exchange access,"[16] and nothing in that provision limits the obligation to traffic related to the ILECs' own customers.[17] As a result, ILECs' statutory duty to charge rates that are "just, reasonable, and nondiscriminatory" applies to their tandem switched transit services.[18]

III. MANDATING IP-TO-IP INTERCONNECTION AND COST-BASED TRANSIT SERVICES IS CRITICAL TO THE DEVELOPMENT AND PRESERVATION OF COMPETITION

RCA strongly believes that the viability of a competitive marketplace—for both wireless and wireline services—requires the ability of carriers to obtain nondiscriminatory interconnection regardless of technology and transit services at cost-based rates. Under an IP interconnection framework, the need for wireless carriers to establish and maintain hundreds or thousands of individual points of interconnection ("POIs") throughout the country would be eliminated and replaced by an immensely more efficient system requiring a mere handful of IP handoff points. As Sprint explained in a detailed analysis of the costs of IP-based interconnection as compared to traditional TDM interconnection, the transition to IP would

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15 *See, e.g.*, Sprint Nextel Comments at 59-62; T-Mobile Comments at 11-12; MetroPCS Comments at 8-10; Charter Comments at 19-21. *See also Qwest Corp. v. Cox Nebraska Telcom, LLC*, No. 4:08CV3035, 2008 U.S. Dist. LEXIS 102032 (D. Neb. Dec. 17, 2008) (interconnection duties of Section 251(c) include the provision of transit service); *S. New England Tel. Co. v. Perlermino*, No. 3:09-cv-1787, 2011 U.S. Dist. LEXIS 48773 (D. Conn. May 6, 2011) (same).

16 47 U.S.C. § 251(c)(2)(A).

17 *See* Charter Comments at 20.

18 47 U.S.C. § 251(c)(2)(D).

confer enormous cost efficiencies that would flow through to consumers.[19] By the same token, T-Mobile demonstrated that IP-to-IP interconnection is superior to TDM interconnection in a number of other important qualitative respects, including redundancy and security.[20] Moreover, as noted above, a nationwide policy providing for IP interconnection is critical to the Commission's goal of transitioning to all-IP networks and eventually retiring the legacy public switched telephone network ("PSTN").[21]

Commenters also agree that Commission regulation is needed to ensure that ILECs will transition to providing IP-based interconnection. AT&T and Verizon are not only the nation's two largest ILECs but also control the nation's dominant wireless service providers. Their dominant position in the marketplace gives them enormous incentives to refuse to engage in IP-to-IP interconnection with competitive carriers, despite their claims to the contrary.[22] For example, as T-Mobile points out, ILECs currently have the ability to "force competitors to subsidize their capital investments through non-recurring charges and their operational costs through above-cost monthly recurring charges."[23] In so doing, these dominant providers "impose needless costs that hold back broadband deployment and adoption," in addition to distorting the marketplace and impeding more robust competition.[24] Transitioning to IP-to-IP interconnection would eliminate these inefficiencies and prevent anticompetitive efforts to raise rivals' costs. To be sure, parties should retain the flexibility currently afforded under Section

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19 *See* Sprint Nextel Comments at 17-21.

20 *See* T-Mobile Comments at 4.

21 *See FNPRM* ¶ 1335; Leap/Wireless Comments at 13 (proposing specific rules to "facilitate a smooth transition to an all-IP network for voice traffic").

22 *See* Verizon Comments at 9-14; AT&T Comments at 20.

23 T-Mobile Comments at 3.

24 Time Warner Cable Comments at 10-11.

252 to negotiate voluntary IP interconnection arrangements "without regard to the standards set forth in subsections (b) and (c) of section 251."[25] But, as the opening comments reflect, Commission action is necessary to combat widespread ILEC intransigence. Absent the regulatory backstop established in Sections 251 and 252, there is no reasonable prospect that a genuinely competitive marketplace can emerge, as Congress recognized.

For many of the same reasons that the Commission should establish competitors' rights to IP-to-IP interconnection, continued regulation of ILECs' provision of tandem switched transit services also is necessary. The ability of ILECs to charge high rates for transit traffic (or worse, refuse to provide transit services at all) would provide yet one more opportunity to exploit their market power to drive up the costs of competitive carriers. Accordingly, as several commenters have noted, the Commission must be vigilant to guard against ILECs' efforts to inflate transit rates, particularly as a means of offsetting the reductions in terminating access rates mandated by the Commission.[26] Such rate increases for transit services would not only thwart competition but also would undercut the Commission's concerted efforts to transition to a more rational and efficient intercarrier compensation regime.

Finally, while the *FNPRM* seeks comment on whether CMRS carriers should be subject to ILEC-like duties where competitive LECs seek interconnection,[27] there is no legal or policy basis for imposing such requirements. Whatever the merits of the Commission's previous determination that CMRS carriers are obligated to negotiate interconnection agreements with *ILECs* under the Section 252 framework, the Commission appropriately declined to impose a

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25 47 U.S.C. § 252(a)(1).

26 *See, e.g.*, Comments of Comcast Corporation, WC Docket No. 10-90 *et al.*, at 8 (filed Feb. 24, 2012) (citing numerous other comments); Sprint Nextel Comments at 68-71; *see also* FNPRM ¶ 1312 (citing comments).

27 *FNPRM* ¶ 1324.

requirement that CMRS carriers negotiate under that framework in response to requests from *CLECs*.[28] Because CMRS carriers other than AT&T and Verizon lack the ubiquitous networks and market power that warrant the imposition of interconnection duties on incumbent LECs, there is no legitimate reason to subject those competitors to such ILEC mandates. Indeed, it would turn the statute on its head to convert competitive wireless carriers' interconnection rights under Section 251 into duties designed for historical monopoly providers.

CONCLUSION

Preserving competitive carriers' interconnection rights remains as vital today as it was when Congress enacted the 1996 Act, if not more so. As a result of excessive consolidation and the emergence of AT&T and Verizon as nationwide super-carriers, competition is now on shaky ground. RCA applauds the Commission's continued commitment to enforcing the rights of telecommunications carriers and therefore urges the Commission to confirm that ILECs must (i) agree to interconnect and exchange traffic in IP format to the extent technically feasible and (ii) provide tandem switched transit services at cost-based rates.

Respectfully submitted,

/s/

Steven K. Berry
Rebecca Murphy Thompson
RCA—THE COMPETITIVE CARRIERS ASSOCIATION
805 Fifteenth Street, N.W., Suite 401
Washington, DC 20005

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[28] *CAF Order* ¶ 845.